

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT Application of
Bern

Group Art Unit: 3709

U.S. App'n Ser. No.: 10/520,111

Examiner: Wert, Joshua P.

Filed: December 17, 2004

Att. Docket No.: 62642-P10008

For: A GAME CONSOLE IN AN ELECTRONIC CARD GAME SYSTEM, AN
ELECTRONIC GAME CARD TO BE RECEIVED THEREBY, AND AN
ELECTRONIC CARD GAME SYSTEM

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13 November 2007

APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final rejection of claims 17-24 and 26 of the subject application.

(i). Real Party in Interest:

This application is assigned to Kid Cards Interactive AB

(ii). Related Appeals and Interferences:

There are **no** other prior or pending appeals, interferences or judicial proceedings known to Appellant, the Appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(iii). Status of Claims:

Claims 17-24 and 26 are pending in this application.

Claims 1-16, 25 and 27-32 are canceled.

Claims 17-24 and 26 stand rejected.

The rejection of claims 17-24 and 26 is appealed.

Please see the Appendix for a copy of the claims under appeal.

(iv). Status of any Amendment Filed Subsequent to Final Rejection:

No amendments have been filed subsequent to final rejection.

A Notice of Appeal was filed on 27 September 2007 along with the appropriate fee.

(v). Summary of Claimed Subject Matter:

Independent claim 17 provides a game console in an electronic card game system comprising a power supply, a display, a processor, memory means, electronic game card reading means, electronic game card writing means, electronic game card receiving means, and communication means for communicating with at least one other game console, the processor being configured for reading a first data item from an electronic game card at least partially inserted in the electronic game card receiving means, using the electronic game card reading means, the electronic game card comprising a memory comprising changeable data, the changeable data comprising at least one game related attribute and at least one value associated thereto; receiving a second data item from a second game console using the communication means, the data comprising at least one game related attribute and at least one value associated thereto; generating a game result based on the first data item and the second data item

in respect of the at least one game related attribute and the at least one value associated thereto; writing at least one first new value related to the at least one game related attribute to the memory of the electronic game card, using the electronic game card writing means; transmitting at least one second new value data in relation to the at least one other game console using the communication means; and displaying, on the display, at least one of: the first data item, the second data item, the at least one first new value related to the at least one game related attribute of the electronic game card, at least one second new value related to the at least one game related attribute related to the second game console, and a game result. Basis for claim 17 can be found in the originally filed application including at page 9, line 29 to page 10, line 32.

Independent claim 24 provides an electronic game card game system, comprising at least a first game console and a second game console, the first game console comprising a power supply, a display, a processor, memory means, electronic game card receiving means, electronic game card reading means, electronic game card writing means, and communication means for communicating with at least one other game console; an electronic game card able to be at least partially inserted into the electronic game card receiving means of the first game console, the electronic game card comprising a memory comprising changeable data, the changeable data comprising at least one game related attribute and at least one, value associated thereto; the electronic game card when inserted into the electronic game card receiving means, being configured for allowing reading of the at least one value related to the at least one game related attribute, using the electronic game card reading means; and receiving at least one new value, which new value is generated by the processor of the first game console and which is related to the at least one game related attribute, using the electronic game card writing means. Basis for claim 24 can be found in the originally filed application including at page 9, line 29 to page 10, line 22.

Dependent claim 26 provides for an electronic game card game system according to claim 24, comprising at least two game consoles, the processor being configured for, reading a first data item from an electronic game card at least partially

inserted in the electronic game card receiving means, using the electronic game card reading means, receiving a second data item from a second game console using the communication means, the data comprising at least one game related attribute and at least one value associated thereto, generating a game result based on the first data item and the second data item in respect of the at least one game related attribute and the at least one value associated thereto, writing at least one first new value related to the at least one game related attribute to the memory of the electronic game card, using the electronic game card writing means; transmitting at least one second new value data in relation to the at least one other game console using the communication means, and displaying, on the display, at least one of the first data item, the second data item, the at least one first new value related to the at least one game related attribute of the electronic game card, at least one second new value related to the at least one game related attribute related to the second game console, and a game result; and further comprising at least two electronic game cards. Basis for claim 26 can be found in the originally filed application including at page 9, line 29 to page 10, line 22, and at page 13, lines 6-9.

(vi). Grounds of Rejection to be Reviewed on Appeal:

- I. Whether claims 17, 18, 21-24 and 26 are anticipated under 35 U.S.C. § 102(b) by U.S. published appl. No. 2001/0039212 (Sawano).
- II. Whether claims 19 and 20 are unpatentable under 35 U.S.C. § 103(a) over Sawano in view of U.S. Patent No. 6,354,940 (Itou).

(vii). Argument:

I. Claims 17, 18, 21-24 and 26 are not anticipated under 35 U.S.C. § 102(b) by Sawano.

Claims 17, 18 and 21-23 do not stand or fall with any other claim.

Claim 24 does not stand or fall with any other claim.

Claim 26 does not stand or fall with any other claim.

The rejection of claims 17, 18, 21-24 and 26 under 35 U.S.C. § 102(b) as being anticipated by Sawano is respectfully traversed. The claimed invention is not anticipated by Sawano for the reasons of record and for the following reasons.

The Examiner argues on page 4 of the Office Action that:

Applicant's argument with respect to claim 17-24 and 26 have been considered but are not persuasive because they are not in commensurate scope with the claims. While the argument is made for Sawano discloses source code being transferred and applicant's invention relates to source code being executed, the claim language of claims 17-24 and 26 recites merely a game console with 'a processor being configured for...' and does not recite the execution of any program, steps of code or any kind.

Sawano discloses a game console with a process or that is configured for, and capable of, performing the steps recited in the claims presented. The examiner has taken in to consideration all of the applicants arguments but maintains claims 17-24 and 26 are rejected previously cited in Office Action mailed 4/4/07.

A. Claims 17, 18 and 21-23 are not anticipated by Sawano

Appellants respectfully submit that Sawano teaches how to transfer source code (data transfer between two game consoles) and the present invention claims how to execute source code (=playing a game between two game consoles).

While claim 17 does not explicitly recite that source code is executed as pointed out by the Examiner, claim 17 specifically recites a configuration for "generating a game result". Appellants submit that "generating a game result" is a key difference between Sawano and the claimed invention.

The Examiner argues that "generating a game result" is equivalent to (Figure 12A; S56, of Sawano using a transfer command to determine if the data is transferred and continuing a flow chart). Appellants respectfully submit that they are not the same for the following reasons.

In the present invention, the result of transfer of data from one unit to another unit can be, for example, either yes or no. In programming language it is common knowledge to set a flag to 1 or 0 where 1 means Yes: all the data was transferred (=Yes) or 0 which means No: some of the transferring of the data went wrong (=No). This means that the result of transferring data in data transfer is always digital. Transferring of data in the digital world is always exact and precise either the data bit was transferred or it was not.

Present claim 17 recites a configuration for "reading a first data from an electronic data card", "receiving a second data from a second game console" and "generating a game result based on the first data and the second data". "Generating a game result" according to common knowledge could be, for example, 103, 11, 45, 288262, 45298, 0, 89276...etc. A game result is a consequence of a game that has been played and the result is mainly related to how successfully the game participant

was in playing the game. A game result is descriptive and could vary for example from a large number, big win, to, for example, negative numbers: a loss.

Generating a game result is not a direct consequence of a data transfer as described in Sawano. See paragraph 104 of Sawano, cited by the Examiner, which states "S52 serves as a transfer request or transfer request command" from a master portable game machine to a slave portable game machine. Sawano simply does not disclose the claimed configuration for "reading a first data from an electronic game card", "receiving a second data item from a second game console" and "generating a game result based on the first data and the second data," and the Examiner has not cited any language in Sawano that teaches such.

To further emphasize the difference between Sawano and the claimed invention, one could also make a comparison with a Pinball machine: In order to get the machine to work one need to download executable source code. During this process the "downloader" gets a reply either the executable source code was "downloaded successfully" or "no it was not downloaded successfully, please try again" (i.e. Sawano). He does not get a game result like you got 532673 points when the software is downloaded. When the download was successfully completed, he can test the pin ball machine by playing a game on it and execute the source code and then he gets a game result which consists in this case of points that could be anything between 0 up several billions of points or higher (present invention). Downloading data to a pinball machine and playing the pin ball machine (=generation of a game result) are two very different things.

Moreover, Sawano does not require a cartridge 40 in each console. In fact, Sawano teaches that a single cartridge 40 can be used to play multiple consoles. See paragraph 11 of Sawano. See also Fig. 12A of Sawano, which shows the flow chart for "No Cartridge." On page 7, at paragraph 93, Sawano teaches a multiplayer embodiment, using more than one console (portable game machines). See paragraph 96, which teaches that a cartridge 40 is only inserted in a "master"

console, referring to Fig. 12A [should be 12B]. This paragraph goes on to state that the “slave” console is “not loaded with a cartridge 40” referring to Fig. 12B [should be 12A]. Thus, in the multiplayer mode, i.e. more than one console, Sawano clearly teaches that only one cartridge 40 is used and the information from that cartridge is downloaded to all of the slave consoles. For this reason, Sawano cannot possibly teach that the game machine and cartridge 40 are configured to generate a game result based on the first data from the game card and the second data from another console since all of the slave game consoles do not even have cartridge 40.

For these reasons, Sawano does not disclose all of the features recited in claims 17, 18 and 21-23. Accordingly, withdrawal of the Section 102 rejection is respectfully requested.

B. Claim 24 is not anticipated by Sawano

Claim 24 recites “the electronic game card comprising a memory comprising changeable data, the changeable data comprising at least one **game related attribute and at least one, value associated thereto**; the electronic game card when inserted into the electronic game card receiving means, being configured for allowing reading of the at least one value related to the at least one game related attribute, using the electronic game card reading means; and receiving at least one new value, which new value is generated by the processor of the first game console and which is related to the at least one game related attribute.”

See paragraph 104 of Sawano, cited by the Examiner, which states “S52 serves as a transfer request or transfer request command” from a master portable game machine to a slave portable game machine. Sawano simply does disclose the claimed “changeable data comprising at least one **game related attribute and at least one, value associated thereto**” and the Examiner has not cited any language in Sawano that teaches such. As discussed above, Sawano only transfers source code data, not how to play the game.

As discussed above, Sawano does not require a cartridge 40 in each console. Thus, Sawano cannot possibly teach that the game machine and cartridge 40 are configured such that "at least one game related attribute and at least one, value associated thereto" is present on the game card and is configured to receive "at least one new value... generated by the processor" of another game console.

For these reasons, Sawano does not disclose all of the features recited in claim 24. Accordingly, withdrawal of the Section 102 rejection is respectfully requested.

C. Claim 26 is not anticipated by Sawano

Claim 26 requires at least two electronic game cards 31, as shown in Fig. 3, one for each game console. The Examiner cites the cartridge 40 in Sawano as being a game card.

Sawano in fact teaches away from the claimed invention. See paragraph 11 of Sawano. See also Fig. 12A of Sawano, which shows the flow chart for "No Cartridge." On page 7, at paragraph 93, Sawano teaches a multiplayer embodiment, using more than one console (portable game machines). See paragraph 96, which teaches that a cartridge 40 is only inserted in a "master" console, referring to Fig. 12A [should be 12B]. This paragraph goes on to state that the "slave" console is "not loaded with a cartridge 40" referring to Fig. 12B [should be 12A]. Thus, in the multiplayer mode, i.e. more than one console, Sawano clearly teaches that only one cartridge 40 is used. Thus, Sawano cannot possibly anticipated the claimed invention in which each console (game machine) has a game card (cartridge).

Furthermore, claim 26 requires that the game card be configured such that "receiving a second data item from a second game console using the communication means, the data comprising at least one game related attribute and at least one value associated thereto, **generating a game result** based on the first data item and the second data item in respect of the at least one game related attribute and the at least one value associated thereto, **writing at least one first new value related to the at least one game related attribute to the memory of the electronic game card**"

In Sawano, there is no game card (cartridge) in the slave game consoles (game machines). Thus, there is no game card that is configured to receive the new value.

Furthermore, as discussed above, Sawano does not teach a system which is configured for "generating a game result."

In view of the many differences between Sawano and the claimed invention, withdrawal of the Section 102 rejection is respectfully requested.

II. Claims 19 and 20 are patentable under 35 U.S.C. § 103(a) over Sawano in Itou.

The rejection of claims 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Sawano in view of Itou is respectfully traversed. The claimed invention is not taught or suggested by the theoretical combination of Sawano and Itou for the following reasons.

Appellants submit that Sawano and the present invention are two completely different configurations for the reasons provided above in response to the Section 102 rejection. Again, one could say that Sawano teaches how "to transfer source code" and not how it works when the source code is executed. In contrast, the present invention recites **how** the "source code is executed" as discussed above.

Itou does not provide the deficiencies of Sawano. Itou also does not teach how the source code is executed. Thus, the combination of Itou and Sawano only teaches how to "transfer source code," which is very different from the presently claimed invention, which claims how the source code is executed.

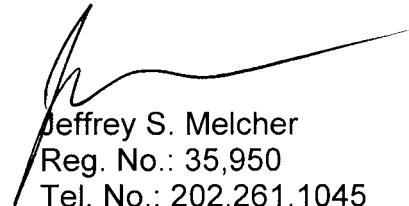
In view of the differences between the claimed invention and the theoretical combination of Sawano and Itou, withdrawal of the Section 103 rejection is respectfully requested.

Conclusion

In view of the lack of anticipation and obviousness over the cited references discussed above, it is believed that this application clearly and patentably distinguishes over the cited references and is in proper condition for allowance. Accordingly, Appellants respectfully request that the Board allow claims 17-24 and 26 over the cited references.

Respectfully submitted,
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(viii) Claims Appendix:

Claims 1-16 (Cancelled)

17. (Previously Presented) A game console in an electronic card game system comprising a power supply, a display, a processor, memory means, electronic game card reading means, electronic game card writing means, electronic game card receiving means, and communication means for communicating with at least one other game console, the processor being configured for

reading a first data item from an electronic game card at least partially inserted in the electronic game card receiving means, using the electronic game card reading means, the electronic game card comprising a memory comprising changeable data, the changeable data comprising at least one game related attribute and at least one value associated thereto;

receiving a second data item from a second game console using the communication means, the data comprising at least one game related attribute and at least one value associated thereto;

generating a game result based on the first data item and the second data item in respect of the at least one game related attribute and the at least one value associated thereto;

writing at least one first new value related to the at least one game related attribute to the memory of the electronic game card, using the electronic game card writing means;

transmitting at least one second new value data in relation to the at least one other game console using the communication means; and

displaying, on the display, at least one of: the first data item, the second data item, the at least one first new value related to the at least one game related attribute of

the electronic game card, at least one second new value related to the at least one game related attribute related to the second game console, and a game result.

18. (Previously Presented) A game console according to claim 17, wherein the power supply is one of a battery and a mains power supply.

19. (Previously Presented) A game console according to claim 17, wherein the game result is also based on a random function.

20. (Previously Presented) A game console according to claim 17, wherein at least one of the at least one first new value and at least one second new value data is decreased.

21. (Previously Presented) A game console according to claim 17, wherein the communication means is arranged for at least one of wireless communication and wired communication.

22. (Previously Presented) A game console according to claim 17, further comprising game control means for allowing a player to select among a plurality of game related attributes and initiate a game.

23. (Previously Presented) A game console according to claim 17, further arranged to be one of handheld and stationary.

24. (Previously Presented) In an electronic game card game system, comprising at least a first game console and a second game console, the first game console comprising a power supply, a display, a processor, memory means, electronic game card receiving means, electronic game card reading means, electronic game card

writing means, and communication means for communicating with at least one other game console;

an electronic game card able to be at least partially inserted into the electronic game card receiving means of the first game console, the electronic game card comprising a memory comprising changeable data, the changeable data comprising at least one game related attribute and at least one value associated thereto; the electronic game card when inserted into the electronic game card receiving means, being configured for

allowing reading of the at least one value related to the at least one game related attribute, using the electronic game card reading means; and

receiving at least one new value, which new value is generated by the processor of the first game console and which is related to the at least one game related attribute, using the electronic game card writing means.

25. (Cancelled)

26. (Previously Presented) An electronic game card game system according to claim 24, comprising at least two game consoles, the processor being configured for, reading a first data item from an electronic game card at least partially inserted in the electronic game card receiving means, using the electronic game card reading means, receiving a second data item from a second game console using the communication means, the data comprising at least one game related attribute and at least one value associated thereto, generating a game result based on the first data item and the second data item in respect of the at least one game related attribute and the at least one value associated thereto, writing at least one first new value related to the at least one game related attribute to the memory of the electronic game card, using the electronic game card writing means; transmitting at least one second new value data in relation to the at least one other game console using the communication means, and displaying, on the

display, at least one of the first data item, the second data item, the at least one first new value related to the at least one game related attribute of the electronic game card, at least one second new value related to the at least one game related attribute related to the second game console, and a game result; and further comprising at least two electronic game cards.

Claims 27-32 (Cancelled)

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(ix) Evidence Appendix:

Not applicable.

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Page 17

(x) Related Proceedings Appendix:

Not applicable.